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ABSTRACT

The Federal Republic of Germany has begun an experiment in industrial democracy giving workers federally guaranteed rights and authority in industrial decision making. All workers in companies with five or more employees are entitled to elect a works council with which management must consult concerning all employment policies and conditions. All companies with over 100 employees must establish a workers finance committee, which will be given specific information on the company's economic and financial situation. The structure has functioned with little friction. Management generally speaks positively about the council system. The more controversial aspect of codetermination is the federal law requiring large stock companies to allow employees to elect 50 percent of the board of directors with rights and authority equal to owners' representatives on the board. Full parity is still elusive, because the power scales remain tipped in favor of management, a situation that is criticized by labor activists. Some owners fear excessive labor influence, and others use and benefit from the system. Works council representatives from both labor and management support the arrangement and its lack of confrontation. Unions remain strong, and strikes occur, but the cooperative potential of codetermination continues to work to resolve conflicts. However, some concern about the future of unions exists. Early fears about the inadequacy of workers in decision making positions have not been borne out, and West Germany has regained substantial industrial strength. (MSE)

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CODETERMINATION IN THE FEDERAL REPUBLIC OF GERMANY

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CODETERMINATION IN THE FEDERAL REPUBLIC OF GERMANY

The Federal Republic of Germany, in which the experience of political democracy is still a relatively new venture, has launched a full scale experiment in industrial democracy giving workers federally guaranteed rights and authority in industrial decision making. The progression to the current legal structure is based on the premise that human dignity demands that the worker be viewed as more than "...simply a segment of the production process which is governed solely by capital interests. Proceeding from this basic thought there is today (in West Germany) widespread agreement that industrial goals must be codetermined by working people and that industrial decisions which affect the worker must allow workers a democratic voice in the decision making process." (Tatsachen ueber Deutschland, Gutersloh, 1982, p. 257)

Herbert Ehrenberg, the German Minister of Labor, wrote in 1976, that expanded codetermination laws appear as "...a requirement of human dignity, the protection of which the constitution demands of government as its primary task." (Mitbestimmung, Bonn, 1979, p 5). The worker is the immediate victim of inflation, recession, overproduction, mechanization, loss of competitive strength, industrial corruption and plant closings or slow-downs . In democratic West Germany the workers have been given a direct voice in and responsibility for those

decisions which affect them, not only through government, but also in the workplace.

Although the German system may strike even very liberal Americans as at least futuristic (or from a more negative perspective, shockingly radical), most Americans are essentially unaware of even the most rudimentary and innocent levels of worker participation in West German industry. I have been surprised again and again in interviews with American business students, business faculty, and business leaders to find most often a lack of awareness of not only the working of, but the existence of the system of industrial democracy in a nation which, although physically small, is economically the fourth largest in the world and is also our single largest competitor in the world market. It seems particularly strange that the German model is essentially ignored at a time when American industry, very concerned about worker alienation and levels of productivity, is spending millions on schemes attempting to increase employee involvement. It seems strange that as the American Catholic bishops call for greater economic justice and protection of human dignity that the German model is not mentioned. Nearly every worker in Germany (including foreign workers) is directly affected. Only 3.4 million workers in the very smallest companies (fewer than 5 employees) remain outside of the system.

At the most basic level, all workers in companies with five or more employees are entitled to elect a works council

(Betriebsrat). By federal law, management must consult with the works council concerning all worker dismissals, manpower planning, operations changes, work procedures, the protection of jobs and the general work situation. Generally speaking, the works council must be informed in a timely manner and given the opportunity to discuss all management plans which will affect workers. In certain areas the works council has the stronger right of direct joint decision making with management and may legally block management desires. This right extends to working hours, methods of payment, hirings, vocational training, vacation, transfers and working conditions within the enterprise. These rights are guaranteed by federal law and are independent of individual union contracts.

All companies with over 100 employees must also establish a workers finance committee which meets once per month with the employer and must be given information on the economic and financial situation of the company, the production and marketing situation, production and investment programs, rationalization plans, the introduction of new work methods, the reduction of operations, the transfer of establishments, and changes in organization.

The works council structure was established by the Works Constitution Act (Betriebsverfassunzsgesetz) of 1952, strengthened by the second Works Constitution Act of 1972, and has functioned with little friction. The only large scale controversy has been

in a few cases where large fast food chains have insisted that since each individual franchise may have less than five full-time employees, that the company as a whole is not subject to codetermination laws. McDonalds continues to be widely scorned for the policy, but it has not adversly affected business nor profits.

Management generally speaks positively of the works council system. Thirty years of experience have shown that elected employees work harmoniously and effectively with management and in fact the council has been very effective in identifying problems early which could have led to serious labor difficulties if allowed to develop.

The more controversial aspect of codetermination is the election of workers to boards of directors (Aufsichtstrat). By federal law large stock companies must allow employees to elect 50% of the board of directors with rights and authority equal to owner's representatives on the board. In the mining, iron and steel industries (Montan-Mitbestimmenzsgesetz) the laws are now traditional, having been instituted in 1951, two years after the establishment of the Federal Republic of Germany as a nation. In the case of the mining, coal, and steel industry, there was comparatively little difficulty in effecting the system. German industry had been destroyed in the war and faced difficulties in recovery under the Allied occupation. The full effort and cooperation of labor was essential to the rebuilding effort.

Parity worker participation did not lead to the outrageous demands many might assume, nor to a loss of competitive capacity. Rather the industries affected grew once again to full size and strength and became fully competitive in the world market. There have been confrontations in those industries from time to time, but for the most part owners and labor have worked well together making decisions together which have been needed for good business. (The current recession in the world steel industry, and the challenge of Third World steel industry, have affected the German industry, but no more so, and often less so than in other western industries without codetermination.)

Nevertheless, the newer codetermination law of 1976 which expanded worker representation to industries other than those covered in the 1951 law, led to strong resistance by capital interests. It was feared that the new system would lead to slower decisions, loss of industrial secrets, excessive demands, and general loss of competitive ability. A major challenge to the constitutionality of the new law was launched, but the new system was upheld and instituted. Under the new law, an additional 500 of the largest German companies are required to have parity employee participation on the supervisory board. The 1976 law calls for an equal number of workers representatives and owners representatives on the board, but in the interest of owners (and often the chagrin of the unions) the scales are tipped somewhat in favor of the owners. The chairman of the board must be from the capital side, and the chairman has the authority to break ties.

Also, one of the employees' representatives must be a person with management responsibility. Nevertheless, the chairman seldom is forced to use tie breaking authority as honest attempts at harmonious decision-making are made by both sides to avoid confrontation and the disruption of production.

After 8 years of experience, labor activists continue to deride the absence of full parity, and owners continue to be concerned about excessive labor influence. Some owners, however, have begun to use the system and benefit from it.

A consistent spokesman for the system is Philip Rosenthal. Management Review reported in 1981, "Rosenthal AG of West Germany says it has increased its productivity by 58% in the last five years. Return on investment has climbed from 6% to 15% in the same period. When necessary, the company has introduced automation and mechanization, closed plants, and cut its work force with the full cooperation of its unionized employees." Rosenthal states, "... the attitude of our employees is a critical and a key factor. Industrial democracy in our organization is now fundamental to growth." (Management Review, March, 1981)

Works council representatives with whom I have spoken (both from the labor and the management side) have expressed comfort with the situation. The regular meetings of councils are carried out in an orderly fashion without a spirit of confrontation. Meetings I have observed have been cordial, although I have been

assured in private by representatives from both sides that they can be quite tough in discussions when the situation requires it. Meetings of the boards of directors are much the same.

"Without a spirit of confrontation." That spirit of cooperation in the common interest is key to the entire system. Federal legislation on codetermination specifically calls for peaceful cooperation in the common interest rather than confrontation, and in the German experiment the ideal has begun to be realized. The traditional adversary role between owners and workers is being replaced by constructive common effort.

It is precisely on that point that American labor continues to reject the idea of codetermination. It is felt that it is only through an adversarial role and confrontation that labor can achieve its ends.

Thomas H. Donahue, executive assistant to the president of the AFL-CIO, said in 1976, "We do not seek to be a partner in management, to be, most likely, the junior partner in success and the senior partner in failure. We do not want to blur in any way the distinctions between the respective roles in management and labor in the plant. We guard our independence fiercely - independent of any political party and independent of management." (Cited in Robert Kuhne, Co-determination in Business, New York, 1980, P. 103.)

George Meany, President of the AFL-CIO said in 1976, "It will not work here. The Germans did it because they were worried about someone like Hitler reappearing. But I never saw a union that was worth a damn unless it was free - completely and absolutely free." (Ibid.)

In contrast Herman Rebhan, General Secretary of the International Metalworks Foundation said in 1980, "A political outlook that prefers confrontation to cooperation may win cheers at the conferences of conservative parties and employers' federations around the world, but what it gains in a warm glow of union-bashing, it loses doubly or three-fold in industrial disruption or social unease." (Vital Speeches, April 15, 1980, p.396.)

Rehban was elected in 1978 to represent labor on the board of Ford Motor Company in West Germany. Asked if he doesn't feel a conflict of interest at times functioning as a union executive and sitting as an employee representative on a board of directors, he responded that this objection is based on the assumption that workers' interests are diametrically opposed to those of owners and managers. Most workers worry about the health of the company where they work. They have a stake in its future, and want to know how it's doing businesswise, and what its plans and prospects are. (Robert A. Senser, "Industrial Democracy, Ltd.", Commonweal, Sept. 12, 1980, p. 489.)

It is not uncommon in West Germany that union activists serve on works councils and union executives are elected to boards of directors. Some owners charge that that dual function more than offsets the lack of full parity workers have on boards. Yet we have not seen abuse on this basis in the German system. The attitude has developed among worker representatives that cooperation can replace confrontation. It is clear that the workers are as interested in the health of the company as the owners. Both live from it. Again and again workers representatives have expressed this idea to me in interviews and expressed astonishment at destructive strikes in other nations over issues which could have been settled through discussion and compromise within the framework of codetermination.

To be sure there are strikes in West Germany (although far fewer than in most industrial nations). The unions remain strong and are hard negotiators for their members. The metal workers strike of 1984 was ample evidence of continuing union strength and union ability to move to confrontation. But even in the face of a strike, the cooperative potential of codetermination continues to work. During the strike works council members and boards of directors representatives often become strike leaders. Yet even during the strike they were able to re-enter the plants for emergency meetings of the works councils. Immediately after the strike, they were able to return to the discussion tables and begin cooperating with management to seek ways to recover production loss during the strike. In most cases by the end of

1984 companies affected had achieved the year's production goals despite losses during the strike termed "disasterous". Many companies actually exceeded their year's production goals. The system worked. Cooperation was able to re-emerge immediately after hard confrontation.

I talked with several strike leader/worker representatives about this after the strike. They felt no conflict of interest in the situation. In both roles they functioned as representatives of the workers. When they felt the strike was needed, they participated, but immediately afterwards, the best interest of the workers lay in the greatest productivity of the company, and they returned to that task with an energy equal to that which they had devoted to the strike.

I also spoke with several members of management who had been on the inside during the strike and who had also returned immediately to working with the former strikers. They thus fulfilled their responsibility to work to return the company to profitability. Although there was some residual bitterness after the strike, both sides were driven by common interest to work cooperatively again, and the structure of codetermination provided an adequate vehicle to accomplish this end.

One might wonder, if the system of codetermination were to work fully, would it not have the tendency to weaken and eliminate unions? Could not all problems be solved in the boardroom and

through compromise at the works council? The German system does not envision this. Workers elected to the works council may not negotiate contracts nor in any way in their function as legal representatives enter into confrontation with management. That role is reserved for the unions. Thus through the unions the traditional adversary potential and defensive weapon of labor is retained. Unions are, however, concerned about loosing membership due to the lack of need for frequent confrontation brought about by codetermination. There has been evidence during the past several years of decreasing feeling of need for the unions on the part of the workers. The unions thus very actively seek to make it clear that the union is the agent of contract negotiations and the ultimate strength of labor and must remain strong. The unions also point out that a central source of information is needed to assist worker representatives in individual plants and to assist in training worker representatives to do the most effective job. The unions offer training sessions for newly elected worker representatives, publish a good deal of information on codetermination, and support research on codetermination. The unions thus have indirectly become an agency of strengthening the system of cooperation. The employers associations too offer seminars for new representatives and publish informational material, but workers tend to prefer those sponsored by the unions.

Workers are given ample opportunity to learn to function in the responsibilities to which they are elected. An early concern

that common workers would not understand the complexities of directing a business, would thus make many mistakes, and due to lack of understanding of business would make excessive demands, have not been problematic. Those elected to responsibility have tended to be mature to the responsibilities for which they have been elected. The unions assist in providing early training, providing continuing education, and providing comparative data for use on the job. Titles of articles on codetermination such as the one which appeared in Fortune in 1976, "The Hardhats in Europe's Boardrooms", with a sketch of workers in hardhats and work dress, do a disservice by furthering a stereotype. Workers representatives elected to boards of directors have been sophisticated, reasonable, and quite able to deal with the issues before them.

Quoting again from Herman Rebhan, "What do you want me to do? Wear Jeans? I don't wear jeans even at home. In my factory days I always took off my work clothes after work. The idea that workers and union officials have to 'look' like workers is outmoded. You can usually spot the intellectuals at a union convention: They're the ones who dress up to look like they've just walked off the assembly line." (Robert Senser, "Industrial Democracy, Ltd.", Sept. 12, p. 489).

Once again Philip Rosenthal, "They will choose to make necessary investments and finance research and expansion rather than squander company profits on inflationary wage rates and

vacations. They will accept the need to integrate operations and eliminate jobs to improve efficiency. If employees have no say in the matter, it is inevitable that they will simply seek higher wages." (Employee Participation by Force", Management Review, March, 1981, p. 35.)

The early fears of the inadequacy of workers in positions of corporate responsibility have not been proven well founded. The anticipation that workers would use position of authority to demand exorbitant wages have not materialized.

In a common declaration issued with the court determination that the 1976 law is, in fact, constitutional, the federal ministers of labor and social order, justice and the interior called again for cooperation. "Now to an even greater measure within the application of the codetermination law we must proceed in the spirit of cooperative effort. The judgment of the court re-affirms codetermination as a system of cooperation, which lives from the common effort of all involved. We assume that all parties are prepared for fair cooperation in high degree." (Mitbestimmung, Bonn, 1979, p. 358).

George Meany dismissed the German move to workers' rights as a kind of paranoia related to the Hitler experience. There may be some element of accuracy to that, for much of German attitude since 1945 is indeed colored by the shock of the Nazi experience. But it must be understood that industrial democracy is by no means

a new concept in German history. The precedent can be found as early as the Frankfurt Parliament of 1848. The first codetermination laws were enacted in 1920. Further, the spirit of full democracy called for in the constitution of 1949 is widely interpreted as leading naturally to industrial democracy as a logical progression.

An American, Paul Fisher, asked a question in 1951 which might well occur today, "Is it, in fact, the first step toward communism? Is it...an attempt on a grand scale to socialize power without socializing ownership, a procedure to seize authority from the employer without conferring it on the state? Is it a step in the development of a corporate state, or of an economy based on the teachings of the Catholic Church?" (Cited in Alfred Thimm, The False Promise of Codetermination, Lexington, Mass., 1980, p. 12).

The ultimate results are not yet clear. Philip Rosenthal with his characteristic optimism wrote, "...We have found a 'third way' - a middle course between unlimited capitalism and bureacratic communism - i.e., workers participating in private industry..." (Codetermination: Worker Participation in German Industry, New York, 1977, p.5).

A third way? A temporary compromise in a land torn between the ideologies of the United States and the Soviet Union? A transition to communism? Only time will tell. For the present, those to the far left dismiss it as a temporary delay in the

overthrow of the free market system. Many idealists and political figures praise the system as a major step in the development of democracy and human dignity. Most Germans have ceased to regard it as novel, and accept it as a normal part of everyday working conditions.

Whatever the ultimate development may be, West Germany has demonstrated that workers can share a great deal of authority in the industrial structure while continuing to perform with a sense of responsibility to the company and to the whole of the national economy. West Germany has become again one of the world's leading economic powers with a strong and innovative industrial base. With full scale codetermination in place, German industry has weathered the most recent world economic crises and has been able to rationalize and retrench when needed and expand when needed with the cooperation of elected workers in positions of authority.